

In the Supreme Court of the State of Alaska

R.G. (Father),

Petitioner,

v.

**State of Alaska, DHSS, OCS, P.G.
(Mother), A.G., E.G., S.G., Y.G.
(Children), Office of Public Advocacy,
and Public Defender Agency,
Respondents.**

Supreme Court No. **S-18046**

Order

Date of Order: **5/11/21**

Trial Court Case Nos. **3PA-20-151/152/153/154CN**

A number of motions are before the court in this petition for review proceeding. They are resolved as follows.

Petitions for review are authorized by Appellate Rule 402(a)(1). A petition for review is appropriate only for trial court orders that are not final judgments subject to direct appeal under Appellate Rule 204. The decision to grant a petition for review is entirely discretionary on the part of the reviewing court. *See* Appellate Rule 402(b) (setting out discretionary nature of decision to grant or deny petition for review and articulating specific reasons why a court might grant such review).

The petition for review in this case — filed April 26 — arises from underlying child in need of aid proceedings in the Palmer superior court, in which petitioner Richard L. Green (father) is represented by court-appointed counsel from the Public Defender Agency. The specific order for which Green seeks our review is an April 14 superior court order denying appointment of conflict counsel for Green in a

then-upcoming representation hearing to consider Green's complaints about his court-appointed counsel.¹

Green asserts that he had a representation hearing in November 2020 and the superior court did not grant his request for new court-appointed counsel. [Petition, p. 4] He asserts that he subsequently filed six motions about alleged ineffective assistance by his court-appointed counsel. [Petition, p. 4] Green apparently had a representation hearing on March 31 before Superior Court Judge John C. Cagle, who appointed the Office of Public Advocacy to provide counsel to represent Green for the limited purpose of litigating Green's assertions of ineffective assistance of counsel by his court-appointed public defender at a hearing set for April 2. [Petition, p. 4; Order, March 31, 2021] But apparently there was no hearing on April 2.

Superior Court Judge Kari Kristiansen held a hearing on April 6, at which Green voiced complaints about his court-appointed public defender and OPA voiced objection to being court-appointed counsel for Green as outside its statutory authority. [Order April 7, 2021] Judge Kristiansen concluded that Judge Cagle's order appointing conflict-counsel to litigate Green's ineffective assistance of counsel claim was premature, vacated that order, and set on a representation hearing for April 15 before a special

¹ A party who is dissatisfied with court-appointed representation may request a representation hearing with the court to discuss concerns and request a different attorney. *See Jensen D. v. State, Dep't of Health & Soc. Servs.*, 424 P.3d 385, 386 (Alaska 2018) (discussing representation hearing involving complaint about attorney communication and lack of "follow through"); *Ben M. v. State, Dep't of Health & Soc. Servs.*, 204 P.3d 1013, 1017-18 (Alaska 2009) (discussing representation hearing involving allegation that attorney would not "be prepared to try the case").

master. [Order April 7, 2021] The court stated that Green could then present his arguments for new counsel and that the special master should consider enumerated standards to resolve whether Green should have substitute counsel appointed or, alternatively, whether Green could, if requested, represent himself. [Order April 7, 2021] Green filed an objection to the special master referral and filed a motion to appoint conflict counsel to represent him at the representation hearing; the court rejected the objection and denied the motion. [Orders April 14, 2021] According to Green, at the April 15 hearing the special master denied Green and the public defender's request that court-appointed conflict counsel represent Green and set on a representation hearing for April 28. [Petition, p. 5] Presumably in response to a motion, the court held a hearing on April 26 and ordered that Green's court-appointed public defender obtain audio recordings and log notes for previous, sealed representation hearings and review them with Green (without providing copies to Green). [Order April 26, 2021; Petition Addendum April 27, p. 2]

Also on April 26, Green — self-represented — filed his petition for review. The other parties to the underlying proceedings were given notice that day that their responses to the petition were due May 6. [Notice of Filing, April 26, 2021] On April 27, Green — self-represented — filed an “Addendum” to his petition describing what had occurred at the April 26 hearing and asserting that he again was forced to participate without court-appointed conflict counsel. [Petition Addendum, p. 2] In the Addendum Green asked this court to issue an order that the superior court immediately release to Green all audio files and log notes, apparently for the entire underlying proceedings, so he could present his claims and prepare for his “appeal” — which we assume is his

petition for review — and to extend the time for his “appeal/petition.” [Petition Addendum, p. 3]

On April 29, Green filed a “Notice of Representation Hearing and Motion to Intervene.” [Notice, April 29] Green described his perspective of what occurred at the April 28 representation hearing, calling it a “sham” among other things, and asked this court to take “original jurisdiction of this matter” or assign the underlying superior court proceedings to an Anchorage superior court judge. [Notice, April 29] Presumably his request for this court to take original jurisdiction was meant to be the focus of his “motion to intervene.”

There were a flurry of filings on May 4-7. The Office of Children’s Services filed an opposition to Green’s motion for expedited production of audio files and log notes. [OCS Opposition, May 4] OCS argued that we should not accept filings from Green as a self-represented litigant in light of his court-appointed counsel, that the representation hearing occurred on April 28 and Green’s court-appointed counsel had informed OCS that the special master denied Green’s request for new counsel, and that Green’s production request was far beyond the scope of his petition for review. [OCS Opposition, May 4] The Guardian ad Litem and the mother joined OCS’s opposition. [GAL Joinder, May 5; P.G. Joinder, May 7] The Public Defender Agency, apparently on behalf of the Agency, filed a non-opposition to Green’s production request. [PDA Response, May 5]

Also on May 5, the Public Defender Agency, again apparently on its own behalf, filed a motion to stay the May 6 deadline for its response to Green’s petition for review. [PDA Motion, May 5] The thrust of the motion was that because the superior

court had not yet reviewed the special master's recommendation or issued a final order resolving the representation hearing, it would be premature to respond to the petition. [PDA Motion, May 5] The motion was directed to an individual justice, and, because it was conceivable that the superior court might grant Green's request for conflict counsel and thereby moot Green's petition, that justice issued an order staying proceedings pending the superior court's final order. [Order, May 6] The order gave Green five days after the superior court's decision to amend his petition with the results of the superior court order and gave all respondents ten days to respond to an amended petition. [Order, May 5] On May 6 both OCS and the GAL filed responses to Green's petition for review. [OCS Response, May 6; GAL Response, May 6]

On May 7, OCS filed an opposition to the Public Defender Agency's stay motion. [OCS Opposition, May 7] OCS noted its receipt of the May 6 stay order and that its opposition should be considered a reconsideration motion; argued that the Public Defender Agency's participation on its own behalf when it was representing Green created procedural morass; and argued that the stay motion was inappropriately designed to allow Green to change his petition for review to add matters beyond that noted in the original petition for review. [OCS Opposition, May 7]

On May 10, OCS filed a separate motion for reconsideration of the May 6 stay order. [OCS Reconsideration Motion, May 10] OCS reiterated the arguments in its May 7 opposition to the stay motion and requested that the reconsideration motion be referred to the full court. [OCS Reconsideration Motion, May 10] The Guardian ad Litem joined OCS's reconsideration motion that same day [GAL Joinder, May 10] and Green filed an opposition to OCS's reconsideration motion that same day. [Green Opposition,

May 10] Green argued that he and the Public Defender Agency are adversarial with respect to his claims of ineffective assistance of counsel, and that his court-appointed public defender will not assist him with his claims of ineffective assistance of counsel or with his petition for review. [Green Opposition, May 10]

With the foregoing in mind, this matter again is before an individual justice and will not be referred to the full court at this time. It is recognized that this matter raises some difficult procedural and substantive issues, but the critical component to the matter is the superior court's order about the April 28 representation hearing. If the superior court appoints conflict counsel for Green, his petition for review is moot. If the superior court denies conflict counsel for Green, then that should be taken into account with respect to Green's argument that he should have been appointed conflict counsel to represent him at the representation hearing. And if the superior court denies conflict counsel for Green, Green should be allowed to add that point to his petition for review to avoid a multiplicity of petitions for review. At the same time, the focus of the current and potentially amended petition for review is narrow and will not be expanded beyond (1) whether conflict counsel should have been appointed to represent Green at the representation hearing and potentially (2) whether, after the representation hearing, the court should have appointed new counsel for Green in the underlying child in need of aid matters or should have appointed conflict counsel for Green to, in some procedural fashion, litigate his claim of ineffective assistance of counsel in the underlying child in need of aid proceedings. Accordingly, **IT IS ORDERED THAT:**

1. Green's motion for an order directing the superior court to produce audio files and log notes of proceedings in the underlying child in need of aid

proceedings is **DENIED** as irrelevant to the specific issues that might be raised in the petition for review.

2. Green's motion that this court take original jurisdiction of "this matter" is **DENIED** because this court does not have original jurisdiction authority and will consider this matter as set forth in the appellate rules for petitions for review.


3. OCS's reconsideration motion is **GRANTED** but relief is **DENIED**. Again, if the superior court decides to grant Green's requested relief, the petition for review likely will be moot. And if the superior court denies Green's requested relief, Green may supplement his petition for review and the respondents may supplement their oppositions to the petition for review as noted in the May 6 order and in this order.

4. Once the petition for review has been fully and finally supported and opposed, the full court will consider whether, in its discretion, to grant (and order briefing) or deny the petition for review.

5. Only filings related to this specific petition for review matter may be filed under the above referenced case number, S-18046. Green must comply with the Appellate Rules and file or lodge appeals or petitions on other matters separately.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

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cc: Judge Kristiansen
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